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## BEFORE THE ARIZONA CORPORATION COMMISSION

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2014 DEC 17 P 4: 47

Arizona Corporation Commission

DOCKETED

DEC 17 2014

AZ CORP COMMISSION  
DOCKET CONTROL

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IN THE MATTER OF FORMAL COMPLAINT  
AGAINST CHAPARRAL CITY WATER  
COMPANY FILED BY THE TOWN OF  
FOUNTAIN HILLS

DOCKET NO. W-02113A-14-0359

STAFF'S MOTION TO DISMISS

The Utilities Division ("Staff") of the Arizona Corporation Commission ("Commission") hereby files its Motion to Dismiss the Complaint filed by the Town of Fountain Hills ("Fountain Hills" or "Town") against Chaparral City Water Company ("CCWC" or "Company").

**I. INTRODUCTION**

Commission Staff is in receipt of and has reviewed the Company's Motion to Dismiss and Answer, together with the responses thereto. Staff agrees that dismissal is appropriate.

**II. CASE HISTORY**

On April 26, 2013, in Docket Number W-02113A-13-0118, CCWC filed an application for an increase in its authorized rates, also requesting approval of a System Improvement Benefit ("SIB") mechanism to address infrastructure replacement needs. On May 24, 2013, Fountain Hills filed a motion to intervene which was granted on August 12, 2013.<sup>1</sup> The Residential Utility Consumer Office ("RUCO") filed a motion to intervene on June 10, 2013. On June 17, 2013, the Administrative Law Judge issued a procedural order granting RUCO's intervention and setting dates for both the hearing and a pre-hearing conference, as well as the dates on which all pre-filed testimony would be due. A copy of that order was sent to Fountain Hills.

CCWC's direct testimony, submitted with its application, requested a rate increase of approximately 34.8% and approval of a SIB mechanism. RUCO filed its direct testimony on

<sup>1</sup> This delay was the result of Fountain Hills' failure to submit documentation that the non-attorney filing that motion was authorized to act on behalf of the Town.

1 December 19, 2013, recommending a rate increase of approximately 17.44%; Staff filed its direct  
2 testimony on December 20, 2013, recommending a rate increase of approximately 11.46% and  
3 approval of the SIB mechanism; and Fountain Hills filed its direct testimony on December 23, 2013,  
4 requesting approval of the rates and charges recommended by Staff. (By the conclusion of the  
5 hearing, the responding parties' recommended rate increases had changed. CCWC continued to  
6 request an increase of 34.8%, RUCO recommended an increase of approximately 7.78% and Staff  
7 recommended approximately 14.47%. Fountain Hills did not update its position).

8 Fountain Hills did not specifically address the SIB mechanism. Fountain Hills was notified of  
9 all scheduling dates for the filing of additional and responsive pre-filed testimony as well as all  
10 hearings and open meetings at which the matter would be considered. Although Fountain Hills filed  
11 direct testimony, it did not file any additional testimony in response to the rebuttal, surrebuttal and  
12 rejoinder testimony of the other parties, though Fountain Hills was provided copies of all pre-filed  
13 testimony.

14 The hearing was conducted over five days in February 2014. Following the hearing, the  
15 factual and legal issues were briefed by the parties, with the Company filing both an opening and a  
16 reply brief, and Staff and RUCO each filing a responsive brief. In all of the foregoing, the  
17 reasonableness of the rates and the SIB mechanism were vigorously presented and argued. A  
18 recommended opinion and order ("ROO") was issued by the Administrative Law Judge ("ALJ") on  
19 May 28, 2014, recommending a rate increase of 16.28% and approval of the SIB mechanism.<sup>2</sup> The  
20 matter was then set on the Commission's Open Meeting Agenda for June 20, 2014. However,  
21 Fountain Hills participated in none of these processes, taking no further action in the case until after  
22 the Commission's decision was issued.

23 Several amendments to the ROO were proposed and docketed prior to the June 20, 2014,  
24 Open Meeting, and a thorough discussion was conducted at that meeting. All parties present were  
25 given the opportunity to address the Commission in that regard. Ultimately, the ROO was amended  
26 and adopted as amended by the Commission on June 20, 2014, in Decision No. 74568 ("the

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27 <sup>2</sup> As part of the consideration of the SIB mechanism, the Commission also considered the issue of the  
28 legality of the mechanism as "comprehensively addressed" in Decision No. 73938, regarding Arizona  
Water Company. See Decision No. 74568, at p. 54.

1 Decision"). In its final Decision, the Commission granted a rate increase of 17.81% and approved the  
2 SIB. The rate increase granted by the Commission is approximately 16.99 percentage points (or  
3 approximately 49%) lower than the Company initially requested, 6.35 percentage points (or  
4 approximately 55%) more than Staff and Fountain Hills initially requested, .37 percentage points (or  
5 approximately 2 %) more than RUCO initially requested and 1.53 percentage points (or  
6 approximately 9 %) more than the ALJ recommended.

7 Both RUCO and Fountain Hills filed requests for rehearing pursuant to A.R.S. §40-253,  
8 which were denied by operation of law. RUCO filed a timely appeal of the Decision on August 21,  
9 2014, in the Arizona Court of Appeals.<sup>3</sup> Fountain Hills has neither filed a notice of appeal nor sought  
10 to intervene in that appeal.

### 11 **III. ARGUMENT**

#### 12 **A. General Criteria for a Motion to Dismiss.**

13 The Arizona Administrative Code ("A.A.C.") specifically provides that said Code shall  
14 govern all cases before the Commission, but that when not in conflict with said Code, the Rules of  
15 Civil Procedure for the Superior Courts of Arizona ("A.R.C.P." or "the Rules of Civil Procedure")  
16 shall govern in all cases before the Commission. A.A.C. R14-3-216. Because the A.A.C. is silent as  
17 to the basis on which a motion to dismiss is to be made, the Rules of Civil Procedure govern.

18 Rule 12(b)(6), A.R.C.P., provides that a complaint may be dismissed if it fails to state a claim  
19 upon which relief can be granted. A motion to dismiss shall be granted when the complainant cannot  
20 prove any set of facts that would entitle him to relief under the authority cited. *See, e.g., State ex rel.*  
21 *Corbin v. Pickrell*, 136 Ariz. 589, 667 P.2d 1304 (1983); *Southwestern Paint & Varnish Company v.*  
22 *Arizona Dept. of Environmental Quality*, 191 Ariz. 40, 951 P.2d 1232 (App. 1997), review granted,  
23 affirmed in part 194 Ariz. 32, 976 P.2d 872; and *Williams v. Williams*, 23 Ariz. App. 191, P.2d 924  
24 (1975).

25 In this matter, Fountain Hills seeks relief under A.R.S. §40-246 which provides, in pertinent  
26 part:

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28 <sup>3</sup> Docket No. 1 CA-CC 14-0003.

1 §40-246. Complaint alleging violation by public service corporation of law or rule or  
2 order of commission; exception; joinder of complaints; notice of hearing Complaint  
3 may be made by the commission of its own motion, or by any person or association  
4 of persons by petition or complaint in writing, setting forth *any act or thing done or*  
5 *omitted to be done by any public service corporation* in violation, or claimed to be in  
6 violation, of any provision of law or any order or rule of the commission, but no  
7 complaint shall be entertained by the commission, except upon its own motion, as to  
8 the reasonableness of any rates or charges of any gas, electrical, water or telephone  
9 corporation, unless it is signed by the mayor or a majority of the legislative body of  
10 the city or town within which the alleged violation occurred, or by not less than  
11 twenty-five consumers or purchasers, or prospective consumers or purchasers, of the  
12 service....<sup>4</sup>

8 **A. Fountain Hills Asserts No Act or Omission By CCWC Which, Even if True, Violates**  
9 **Any Provision of Law or Any Order or Rule of the Commission.**

10 **1. A.R.S. §40-246 can be used to file a complaint against a public service corporation only,**  
11 **not against the Commission.**

11 In its Complaint, Fountain Hills sets forth two counts. Count One alleges that CCWC's rates  
12 and charges are unjust and unreasonable contrary to Article 15, Section 12, of the Arizona  
13 Constitution. Count Two charges that CCWC's SIB mechanism is illegal and contrary to Article 15,  
14 Section 14, of the Arizona Constitution. There is no assertion that the *Company* is acting or failing to  
15 act in accordance with any order or rule of the Commission or any provision of law. Instead, it is the  
16 substance of the *Commission's* order which Fountain Hills asserts to be a violation of law.

17 It is plain from a reading of the Complaint that the alleged actions complained of are not the  
18 actions of the Company but of the Commission. As to Count One, the rates in question were set by  
19 the Commission in Decision No.74568, less than six months ago. There has been no assertion that  
20 the Company is charging rates that are not in accordance with that order. Therefore, it is plainly the  
21 Commission order of which Fountain Hills complains.

22 This is made even clearer upon review of Count Two, which states that the SIB is  
23 unconstitutional because it sets rates outside of a rate case and because it permits annual rate  
24 increases without a consideration of fair value, costs and revenue. As yet, the SIB has not been  
25 implemented and, no surcharge is in place, nor can implementation be sought until one year after the  
26 decision. Fountain Hills does not reference any action or inaction on the part of the Company as  
27

28 <sup>4</sup> Emphasis added.

1 violating Arizona law: it is the *mere existence* of the SIB mechanism which is said to violate Arizona  
2 law.

3 Even the factual allegations supporting Fountain Hills' complaint are aimed at the actions of  
4 the Commission rather than the Company. Multiple items assert that the *Commission* ignored or  
5 disregarded the recommended rate increases proposed by the ALJ, RUCO and Staff. Several other  
6 allegations address the SIB mechanism and the anticipated surcharges that could result therefrom.  
7 These, too, address Commission action only. Staff is *not* conceding the accuracy of these allegations.  
8 However, even if these allegations were true, the Town's complaint does not state a claim under  
9 A.R.S. §40-246.

10 The scope of A.R.S. §40-246 is specific; it addresses only violations of regulatory  
11 requirements *by public service corporations*. Arizona law provides specific and exclusive avenues  
12 for relief from the actions of the Commission which are claimed to be illegal or erroneous. A.R.S.  
13 §40-253 permits any party to the action – and Fountain Hills was such a party here – to seek a  
14 rehearing of the Decision. Further, both A.R.S. §40-254 and §40-254.01 provide for an appeal from  
15 the Decision to either the Superior Court or the Court of Appeals (depending on the type of order).  
16 As noted, RUCO has appealed the decision, a remedy that was also available to Fountain Hills.<sup>5</sup>

17 A.R.S. §40-246 provides for complaints against public service corporations, not for  
18 complaints against the Commission. For the reason that the actions which are the subject of this  
19 complaint are those of the Commission rather than the Company, the Complaint fails to state a claim  
20 on which relief can be granted and should be dismissed.

21 **2. *The complaint fails to allege a regulatory violation by the Company, as required by***  
22 ***A.R.S. §40-246.***

23 Both Fountain Hills and RUCO claim that the 'plain language' of A.R.S. §40-246 allows  
24 Fountain Hills to file a complaint at any time if it believes a company's rates are unreasonable.

25 Fountain Hills, at page 3 of its Response to CCWC's Motion to Dismiss, states:

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26  
27 <sup>5</sup> Although time limits to appeal a decision or to intervene in an appeal exist, Staff has not analyzed  
28 whether such time periods have expired. To the extent Fountain Hills may be prohibited by the  
passage of time to pursue those avenues, the Town's failure to do so does not justify an assertion than  
no other remedy is available to it.

1 ...the Complaint is sufficient.

2 A.R.S. §40-246(A) provides that a party may complain to the Commission about rates  
3 or charges of a water company if: "it is signed by the mayor or a majority of the  
4 legislative body of the city or town within which the alleged violation occurred, or by  
not less than twenty-five consumers or purchasers, or prospective consumers or  
purchasers, of the service.

5 RUCO, at page 2 of its Response to the Company's Motion to Dismiss, states:  
6 The statute is not ambiguous and a plain reading would allow the Town, via its  
Mayor, to file a complaint if she/he felt rates were unreasonable - which RUCO  
7 agrees are under the circumstances.

8 Neither correctly reflects the statute. The statute states that a complaint can be made "by any  
9 person or association of persons by petition or complaint in writing, *setting forth any act or thing*  
10 *done or omitted to be done by any public service corporation in violation*, or claimed to be in  
11 violation, of any provision of law or any order or rule of the commission...." (Emphasis added.)

12 It is clear that any complaint that is filed under §40-246 must be based on an alleged violation  
13 of law or order or Commission rule, not merely on an opposition to recently established rates. In the  
14 present case Fountain Hills has not alleged that the Company has violated a law or order or  
15 Commission rule. Not only does Fountain Hills's complaint fail to allege that the Company has  
16 committed any a regulatory violation, but both Fountain Hills and RUCO acknowledge that the  
17 Company is following a Commission order that recently established the rates.

18 In this case, it is important to recognize that all parties, including Fountain Hills, had notice of  
19 the hearing and the Open Meeting and were presented with the full opportunity to present and cross-  
20 examine witnesses, make opening and closing statements and submit closing briefs. The pre-filed  
21 testimony of Staff and the Company notified all parties specifically of the range of proposed rates and  
22 the proposed approval of a SIB Mechanism. Fountain Hills did submit the pre-filed testimony of the  
23 Town Manager but filed no surrebuttal testimony. The Town presented no testimony at the hearing,  
24 and elected not to appear at either the hearing or the Open Meeting on the rate application. The  
25 Town did, however exercise its opportunity to file a request for re-hearing, but has neither filed an  
26 appeal under A.R.S. §40-254.01 nor intervened in the appeal filed by RUCO.

27 Applying A.R.S. §40-246 in the manner proposed by the Town would result in a series of  
28 rate hearings that might never end, continuing as long as any party were to remain dissatisfied with

1 the Commission's rate disposition. Such a result would conflict not only with the statutory appeal  
2 process but also with the principles of administrative repose. See A.R.S. §§40-252, -258, -254 and  
3 -254.01.

4 This is not to say that rates can never be challenged under A.R.S. §40-246. Such a challenge  
5 could be raised in situations where a public service corporation, through its action or inaction, has  
6 failed to appropriately pursue rate relief. Because Arizona uses a historic test year, rates are set based  
7 on a specific snapshot of time – the 12 month test year. Rates based upon the test year data are  
8 reasonable when established, but, over time, rates and the cost of service on which they are based  
9 may become misaligned so that those rates are no longer reasonable. In many, if not most, instances,  
10 the misalignment warrants an increase in rates, so that the utility is incentivized to seek an adjustment  
11 to those rates. However, where rates have become unreasonably high, there is no incentive for a  
12 utility to seek a reduction in its rates. A.R.S. §40-246 fills that gap by allowing customers, or others,  
13 to bring the matter to the Commission's attention, where the Commission can then conduct an inquiry  
14 to determine whether a rate case would be appropriate. In such a circumstance, a company's failure  
15 to timely file a rate case could be actionable under A.R.S. §§40-246. See, e.g., A.R.S. §40-361.

16 In *State ex rel. Ozark Border Elec. Co-op v. Public Service Commission of Missouri*, 924  
17 S.W.2d 597 (1996), the Missouri Court of Appeals, which addressed a Missouri statute nearly  
18 identical to A.R.S. §40-246, concluded that an allegation of a violation is required and, where the  
19 complaint fails to do so, it will be dismissed. In that case, the Missouri Public Service Commission  
20 had conducted a hearing and approved a territorial agreement between Union Electric and Poplar  
21 Bluff, finding that the territorial agreement was not against the public interest. A year later, Ozark  
22 Border Electric Cooperative (Ozark) filed a complaint under Missouri's general complaint statute,  
23 V.A.M.S. §386.390.1, which is nearly identical to A.R.S. §40-246, alleging that the territorial  
24 agreement was no longer in the public interest.

25 Missouri's general complaint statute, like A.R.S. §40-246, specifically requires a violation of  
26 law or Commission order. Missouri's version of that statute states:

1 Complaint may be made by the commission of its own motion, or by the public  
2 counsel or any corporation or person, chamber of commerce, board of trade, or any  
3 civic, commercial, mercantile, traffic, agricultural or manufacturing association or  
4 organization, or any body politic or municipal corporation, by petition or complaint in  
5 writing, setting forth any act or thing done or omitted to be done by any corporation,  
6 person or public utility, including any rule, regulation or charge heretofore  
7 established or fixed by or for any corporation, person or public utility, in violation, or  
8 claimed to be in violation, of any provision of law, or of any rule or order or decision  
9 of the commission; provided, that no complaint shall be entertained by the  
commission, except upon its own motion, as to the reasonableness of any rates or  
charges of any gas, electrical, water, sewer, or telephone corporation, unless the same  
be signed by the public counsel or the mayor or the president or chairman of the  
board of aldermen or a majority of the council, commission or other legislative body  
of any city, town, village or county, within which the alleged violation occurred, or  
not less than twenty-five consumers or purchasers, or prospective consumers or  
purchasers, of such gas, electricity, water, sewer or telephone service.  
V.A.M.S. 70.386.390.

10 As in this case, the Missouri Commission had before it a complaint wherein no specific action  
11 or inaction by the public service company was asserted. Rather, it charged that the existing  
12 Commission order did not serve the public interest. The Court dismissed the complaint under  
13 V.A.M.S. §70.386.390, stating:

14 Neither of these allegations constitutes a violation of law, rule or Commission order  
15 as required by Section 386.390 RSMo. The objections Ozark has raised are among  
16 the types of objections properly considered in the original proceeding, Case No. EM-  
94-90.

17 Although the principles of finality are somewhat more flexible in an administrative setting,  
18 those principles should nonetheless apply to prevent the specter of a constant series of rate cases,  
19 essentially relitigating the same issues over and over again. See A.R.S §40-252. The Decision  
20 constitutes a final decision on the merits and the issues raised by the Town were at the heart of that  
21 decision. Again, Fountain Hills, had notice of the hearing and the Open Meeting and a full  
22 opportunity to present and cross-examine witnesses, make opening and closing statements and submit  
23 closing briefs. The reasonableness of the rates and the legality of the SIB mechanism were addressed  
24 in the pre-filed testimony and all parties were notified specifically of the range of proposed rates and  
25 the proposed approval of a SIB Mechanism. Fountain Hills did submit the one page direct testimony  
26 of the Town Manager, adopting Staff's recommendations, but presented no other evidence and  
27 participated at neither the hearing nor the Open Meeting. Nor has it appealed the decision or sought  
28 to intervene in the appeal brought by RUCO.



1 Fountain Hills has not indicated that it has new or different evidence to submit, nor does it  
2 assert that the Company has committed any regulatory violation. Under these circumstances, a new  
3 rate hearing would likely be a "do-over" of the 2014 rate proceeding. Such an action would likely be  
4 fruitless and is not required under Arizona law.

5 **C. The Requested Relief Is Not Available Under A.R.S. §40-246.**

6 Fountain Hills requests a hearing on its complaint and further seeks a determination that the  
7 rates now being charged are unreasonable and that the SIB mechanism is unconstitutional. The Town  
8 also requests a hearing to set reasonable rates, which would require that a full rate case be conducted.  
9 This far exceeds what is authorized by A.R.S. §40-246.

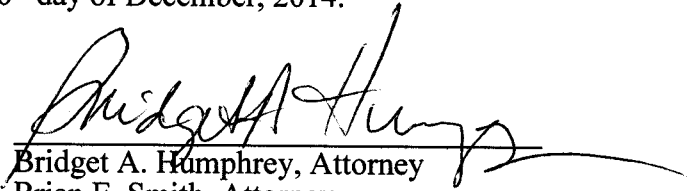
10 In circumstances where A.R.S. §40-246 applies, it is quite limited in scope and only requires  
11 the Commission to *initiate an inquiry* into the rates being charged. In the only Attorney General  
12 Opinion to address this statute, Opinion No. 69-6 (R-38), a true and correct copy of which is attached  
13 hereto as Exhibit A and incorporated herein by this reference, the Attorney General states: "The  
14 procedure set up by the foregoing statute is, we believe, an activator procedure designed to initiate an  
15 inquiry by the Corporation Commission who has the power over rates."

16 In those instances wherein A.R.S. §40-246 applies, the Commission is not required to conduct  
17 a full rate hearing. It is sufficient to conduct a hearing to determine whether there is sufficient  
18 evidence to warrant a full scale rate hearing. To conclude otherwise would mean that any time at  
19 least twenty-five customers or purchasers, or prospective customers or purchasers, complained of  
20 rates, the Commission and the utility would be required to undertake a timely and costly rate case.

1 **IV. CONCLUSION**

2 Based on the foregoing, Staff requests that the Commission dismiss the Town's complaint.  
3 However, if the Commission elects to process the Town's complaint, Staff requests the issuance of a  
4 procedural order to govern the filing of pre-filed testimony and other procedural requirements.

5 RESPECTFULLY SUBMITTED this 16<sup>th</sup> day of December, 2014.

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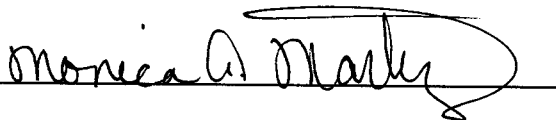
12 Original and thirteen (13) copies of  
13 the foregoing filed the 17<sup>th</sup> day of  
December, 2014, with:

14 Docket Control  
15 Arizona Corporation Commission  
1200 West Washington Street  
16 Phoenix, Arizona 85007

17 Copy of the foregoing mailed this  
18 16<sup>th</sup> day of December, 2014, to:

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February 5, 1969

LAW LIBRARY  
ARIZONA ATTORNEY GENERAL

DEPARTMENT OF LAW OPINION NO. 69-6 (R-38)

REQUESTED BY: THE HONORABLE MILTON J. HUSKY,  
CHAIRMAN  
Arizona Corporation Commission

QUESTION: Does A. R. S. Sec. 40-246 (A) which provides, in part, that "no complaint shall be entertained by the commission, . . . as to the reasonableness of any rates or charges of any gas, electrical, water or telephone corporation, unless it is signed . . . by not less than twenty-five consumers or purchasers, or prospective consumers or purchasers, of the service" require the commission, upon the filing of such a complaint, to hold a full-scale rate hearing?

ANSWER: No.

A. R. S. Sec. 40-246 provides, in pertinent part, as follows:

"A. Complaint may be made by . . . any person or association or persons by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any public service corporation in violation or claimed to be in violation, of any provision of law or any order or rule of the commission, but no complaint shall be entertained by the commission, . . . as to the reasonableness of any rates or charges of any gas, electrical, water or telephone corporation, unless it is signed . . . by not less than twenty-five consumers or purchasers, or prospective consumers or purchasers, of the service.

\* \* \*

"C. Upon filing the complaint, the commission shall set the time when and a place where a hearing will be had upon it and shall serve notice thereof, . . . upon the party complained of not less than ten days before the time set for the hearing, . . ."

Although the statute provides for a hearing upon the filing of a complaint, the statute is silent as to the type of hearing to be held. It seems clear to us that this hearing can only be directly related to the constitutional powers of the Corporation Commission pursuant to Article 15, Section 3, Arizona Constitution:

"The Corporation Commission shall have full power to, and shall prescribe just and reasonable classifications to be used and just and reasonable rates and charges to be made and collected, by public service corporations within the state for services rendered therein. . . ."

The procedure set up by the foregoing statute is, we believe, an activator procedure designed to initiate an inquiry by the Corporation Commission who has the power over rates.

Upon the filing of a complaint "as to the reasonableness of any rates or charges of any gas, electrical, water or telephone corporation... signed by twenty-five (25) consumers or purchasers or prospective consumers or purchasers of the service", the Commission would be complying with the provisions of A. R. S. Sec. 40-246 by holding a hearing to determine whether or not there is sufficient evidence to warrant a full-scale rate hearing. We can find no Arizona case covering this question. In Residents of City of Hartford v. Hartford Electric Light Company, 9 PUR N S 228 (1935), a petition signed by 15 customers of the utility alleged that the utility's rates were unreasonable and discriminatory. Upon receiving such petition, the Commission was required to set a hearing upon the complaint. The Commission, before proceeding to a full-scale rate hearing with its incidental burden of expense, required a prima facie showing that the rates were unreasonable. In deciding that there was not enough evidence alleged in the petition to justify a full-scale rate hearing, the Commission stated:

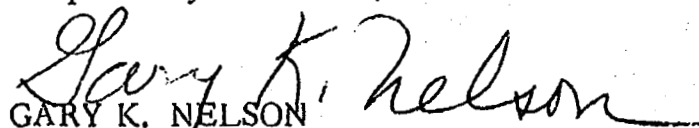
"A general rate inquiry necessarily occasions substantial expense to the state and the company. This expense must ultimately be paid, in part, at least, by the customers of the company. It would be entirely inequitable if a small group of customers could impose this burden upon all the others in the absence of a reasonable anticipation that a full investigation would result in a substantial reduction in the rates."

In Utility Users League v. Illinois Bell Telegraph Co., 43 PUR 3rd 38 (1961), the Commission, in considering a complaint as a request for a full-scale investigation of the utility's rates, stated:

"...In this consideration, it must be borne in mind that formal rate investigations of large utilities such as this company are time-consuming and expensive, and ultimately such expense must be borne by the ratepayer. As the Illinois Supreme Court has observed: 'Certainly as a practical matter a utility should not, in the absence of explicit legislative direction, be required to embark upon a full-dressed justification of its rate structure every time an individual customer files a complaint....'"

It would be unreasonable to assume that the Legislature, in enacting A. R. S. Sec. 40-246, intended that each time a group of twenty-five consumers or purchasers, or prospective consumers or purchasers of a public service corporation filed a complaint as to the reasonableness of such corporation's rates and charges, the Commission would be required to hold a full-scale rate hearing. The provisions of the statute are complied with by the holding of a hearing to determine whether there is sufficient evidence to warrant a full-scale rate hearing. If the Commission determines that there is sufficient evidence, then arrangements would have to be made with the Legislature for funding the investigation and hearing, if necessary.

Respectfully submitted,

  
GARY K. NELSON  
The Attorney General *wen*

GKN:bh